ACHIEVEMENTS OF FEDERAL MEDIATION

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IN almost all parts of the world, especially before the abnormal conditions brought about by the European war, there has been during recent years a constantly growing spirit of industrial unrest. One of the most pressing questions of the day is, What can be done to secure and maintain industrial peace? All branches of industry have been affected by conflict and dissension. Within the past three years in this country Congress created a commission charged with the duty of ascertaining the underlying causes of industrial unrest and the best measures for promoting the peaceable settlement of industrial disputes. Similar inquiries have been authorized and constructive recommendations put forward in foreign countries. The maintenance of peace in the transportation industry and in other public utilities has been given primary consideration for the reason that the public welfare is closely bound up with their regular operation.

When we consider the misery and crime arising from ordinary industrial conflict—the passions which are inevitably produced in the heart of the strikers, the stimulation of mutual distrust and the widening of the gulf between employers and employees, the destruction of the happiness of many homes, the privations undergone by half-starved wives and children and the high mortality rate among children, violence and oftentimes murder and bloodshed, the destruction of property and the waste of capital, the dissipation of the workingman's savings of many years, and the permanent injury to a country's trade and industry—it is impossible not to sympathize at least with every plan to do away with lockouts and strikes altogether, or at least to cause them to be of infrequent occurrence. This feeling is intensified when the evil effects of railway

strikes are contemplated because the breakdown of our transportation system through controversies as to wages or working conditions means widespread suffering and possibly disorder and violence approaching civil war.

Recently I have had occasion to make a survey of legislation or administrative regulations for the purpose of preventing strikes or bringing about the peaceable and orderly settlement of disputes as to wages and working conditions on railroads which have been adopted by the leading industrial and commercial nations. These measures reveal a remarkable lack of uniformity. Each country or section seems to have worked out its own system from its own experience. In only one or two cases has one nation adopted the plan of another.

In the study of this class of legislation, however, one fact stands out prominently. Two things have been responsible for anti-strike legislation and legislation for the orderly settlement of industrial disputes. One group of countries in framing such legislation has primarily had in mind the protection of the public against the injurious effects of industrial warfare in the railway and other public utility services. Such reasons are evidently responsible for the legislative enactments in Canada, France, Italy, Russia, Rumania, Spain, and Portugal, and the attitude towards employees of the railway administration of Austria and Germany. On the other hand, the preservation of industrial peace and the advancement in economic welfare of certain industrial classes have been primarily considered in framing the legislation of Australasian countries, and the prevention of industrial conflicts in the railway service has been incidental to these broader purposes.

Among the Australasian countries, the general tendency of legislation has been to place a limitation, and with practically one exception, a prohibition upon the right to strike of railway and practically all other classes of industrial workers. Provisions against strikes and lockouts are also accompanied by others for the regulation of wages and working conditions. Another group of countries, on the other hand, such as Canada, the Transvaal, Spain, and Portugal, have not denied absolutely the right to strike, but have made the exercise of this right

contingent upon certain conditions—a notification to the government of the intention to strike, or, delay until after a governmental investigation and report. In the case of certain other European countries the right of railway workers or other employees in public service industries to strike is absolutely denied, and no machinery is provided for ventilating grievances. Great Britain and the United States occupy the unique position of having no legislation abridging the right to strike. Both countries have provided official machinery for the adjustment of wage and other difficulties between the railroads and their operating forces. In Great Britain the opportunities for conciliation and arbitration under the Conciliation Act of 1896 have also been supplemented by a general agreement of 1911 between railway officials and employees which makes provision for the conciliation of matters in dispute. In the United States the mediation and arbitration of railway wage disputes is, as you know, provided for by the so-called Newlands law. Strange as it may seem, in the case of these two countries, where legal machinery has been provided for the settlement of grievances without any limitation upon the right to strike, the most pronounced success in dealing with disputes seems to have been attained.

Legislation in the United States for the adjustment of grievances between the railroads and their employees had its inception in the year 1888. A law approved in October of that year provided for voluntary arbitration and practically for compulsory investigation of railway wage disputes. The provisions of this act, however, were never utilized, and it was superseded in June 1898 by what was known as the Erdman law. This legislation provided machinery for the mediation and arbitration of controversies affecting railroads and their train service employees, and was the basis of existing legislation. During the eight years following the passage of this law only one attempt was made to take advantage of its provisions. During the next five years, however, methods of procedure under the law were fully developed and its effectiveness was established.

There were in all 61 cases settled on request of the parties

either by mediation under the Erdman law or by arbitrations in accordance with its provisions. Seven of these cases were concerted movements, involving many of the various classes of employees and involving in each instance a large number of railroads, in one case as many as 64 roads. Of the 61 cases coming under the Erdman law during the 14 years of its existence, 28 were settled through mediation, 8 were settled by mediation and arbitration, and 4 by arbitration alone. In the remaining 21 cases, either the services of the mediators, requested by one of the parties, were refused by the other, or else direct settlements were reached between the parties after the services of the mediators were invoked without employing them or resorting to arbitration. The credit for the remarkable achievements in mediation and conciliation under this law are to be attributed to Judge Martin A. Knapp, chairman of the interstate commerce commission and presiding judge of the commerce court during this period, and to Dr. Chas. P. Neill, at that time United States commissioner of labor.

The next step in legislation relative to mediation and arbitration was the so-called Newlands law, approved July 13, 1913. It created the offices of commissioner of mediation and conciliation and assistant commissioner of mediation and conciliation, and further provided that the President shall also "designate not more than two other officials of the Government who have been appointed by and with the advice and consent of the Senate, who, together with the commissioner of mediation and conciliation, shall constitute a board to be known as the United States Board of Mediation and Conciliation." In August 1916 the board was increased to three members by the designation by the President of the assistant commissioner of mediation and conciliation as a member.

The law reënacted the general provisions of the Erdman law relative to mediation. It also provided for three-member boards of arbitration as authorized by the Erdman Act, but in addition, in order to meet the criticism of three-member boards placing too much power in the hands of the neutral arbitrator, it provided further for six-member boards of

arbitration, composed of two representatives from each side to a controversy, and two neutral members representing the public.

The immediate cause for the passage of the present law was the demands of the conductors and trainmen, which had been presented, in a concerted movement, some months previously to 42 eastern railroads in what is known as eastern associated territory. The direct negotiations between the parties resulted in a refusal by the railroads to grant the demands of the men, on the ground that the rates of wages then prevailing were adequate and that the employees were working under favorable conditions. A strike vote had been taken, resulting in some 97 per cent of the employees voting to withdraw from the service of the railroads unless their demands were complied with. The situation was an aggravated one and reached an acute stage early in July 1913. The public mind was excited, and the bill which had been pending in Congress for some months was, upon the advice of the President, promptly enacted into law to meet the emergency.

From the approval of the Newlands law on July 15, 1913, up to October 18 of the present year, a total of 61 controversies were adjusted by the board of mediation and conciliation. Of this number 46 were settled by mediation, 11 were adjusted by arbitration, and 4 by mediation and arbitration. In one case only have the board's efforts to effect a settlement by mediation failed and congressional action has become necessary to deal with a situation for which no preventive remedy existed. A strike which would have shattered the very foundation of our national industrial fabric, and which might have brought on revolution at a time when the fighting blood of the world was at fever heat, was averted. But it remains to be seen whether the attempt to settle an industrial dispute by special legislative action will prove as efficacious as the methods of peaceful adjustment brought about by mediation and the voluntary movements of the parties. In 21 cases employees made application for the services of the board, the railroads applied in 15 cases; in 17 cases the railroads and their employees made joint applica-

tion, and in 8 cases the board proffered and had its services accepted.

Some of the cases adjusted by the board or arbitrated under the auspices of the boards have involved thousands of employees and hundreds of millions of dollars of railway property. Two of the largest cases handled were the concerted movement of conductors and trainmen in the East in 1913, which involved 92,448 employees, and that of 1914-1915, which embraced all roads west of the Mississippi river and their locomotive engineers and firemen, who were 55,186 in number. In several other controversies the employees have exceeded 25,000 in number, and I believe it can be safely stated that every railroad of more than 100 miles in length in the entire country has been directly involved in controversies of some nature requiring the board's services. No strike has ever occurred where the services of the board have been invoked or where a case has actually been taken up, and in only three instances since the present mediation law was enacted have train movements been even temporarily suspended, with but slight inconvenience to the public and infinitesimal damage to property. So far as I have information, this record has not been equaled in any country where machinery has been provided for the settlement of railway wage disputes. If the magnitude of the property interests and the number of employees involved in railway wage disputes in this country are taken into consideration, the results which have been accomplished under the Newlands law have been without a parallel abroad.

These results have not been due primarily to any personal qualification of the members of the board or to any peculiar provisions of the existing law. Without the spirit which has characterized the attitude of both railway officials and the representatives of labor organizations the efforts of the board would have been unfruitful. With the single exception already referred to, both sides to controversies have exhibited a spirit of fairness and of conciliation which has made reasonable adjustment of disputes possible. In that case, neither the railway officials nor the representatives of the labor organi-

zations yielded in any wise to the endeavors of the mediators. The long direct negotiations between the opposing parties before mediation was attempted apparently had brought them into such deadly conflict that they were impervious to all conciliatory influences. When the existing law was enacted emphasis was placed upon the possibilities of arbitration as a method of settling disputes between the railroads and their employees. As a result of the actual operation of the law, it has become more and more evident, however, that mediation is the leading factor and presents the greatest possibilities for the future. In this our experience has been similar to that of Canada and Great Britain. Sir George Askwith, of the British Board of Trade, who has been so eminently successful as a conciliator in labor disputes in Great Britain, made an investigation in 1912 of the operation of the Canadian Disputes Act. His conclusions verify our own experience by showing that it has been identical with that of Canada and Great Britain:

> Discussion with men who have been practically connected with the boards of Canada only endorsed the view that personal experience in this country has given. I found that, in the opinion of several of those who had acted as members of boards, the surest method of securing settlements was by the power given by the act of conciliating the parties, and, if conciliation did not avail, of making recommendations. One chairman, Professor Adam Shortt, so successfully adopted this method that in the twelve or fourteen cases with which he was connected settlements were reached in every instance by agreement.
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> The Act has been marked by success where the policy followed by Professor Shortt has been adopted.
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> I consider that the forwarding of the spirit and intent of conciliation is the more valuable portion of the Canadian act.

As a result of the recent eight-hour-day controversy, President Wilson recommended changes in the existing law which would add to the present machinery of the Newlands law the requirement that, if mediation fails, an investigation and report must be had by a board equally representative of em-

ployers, employees and the public, before a strike or lockout can be legally declared. It is not thought that the strength of this proposal is in the penalties attached to an illegal strike or lockout. As Sir George Askwith and other students have stated, the restrictive or coercive features of the Canadian law have not been effective. The same assertion is also made relative to compulsory features of the Australasian laws. The real value of the addition of the Canadian idea to existing legislation in this country lies in the further means it will afford for intervention for the purpose of mediation and conciliation. If the ordinary course of mediation fails, a further opportunity will be given for conciliation in the light of investigation. If, under these conditions, mediation again fails, a further recourse to peaceable adjustment will be had under the existing law by means of an arbitration agreement.

From this brief outline of the general work and experience of the United States board of mediation and conciliation, it may be fairly deduced, so far as any value may be attached to my personal opinion, that the time and occasion have not yet arrived when the principle of compulsory arbitration should be attempted by legislative enactment. Indeed, it is a subject of grave doubt as to whether compulsory arbitration will accomplish the purpose of its enactment. It is not yet claimed even by the advocates of compulsory mediation in those countries where it has been adopted, that it is a solution of the problem. Whether this is due to faults of administration, to inherent defects in the laws, or to the lack of positive social sanction, I do not know. Are not the principles of mediation and compulsion antagonistic? Can there be successful mediation where the parties are compelled by law to mediate? Does not the idea of mediation involve the idealism of voluntariness? These are questions to be seriously considered in any movement toward compulsory mediation. The drift of sentiment seems, however, to be in that direction. We should be careful, however, that we do not destroy the spirit of mediation that has been so potent a factor in the unparalleled results standing to the credit of our federal conciliation laws.

As in Gregorian music, the main part of the melody, lying

between the intonation and the ending, is what the great composers have called mediation, so in this conflict between employer and employee, which some choose to call a conflict between capital and labor, with all its discordant notes, there is a wide range between the commencement and the ending of a labor controversy, involving corporation costs and human happiness, for concilatory movements by disinterested performers under the guidance and sanction of federal authority and in the interest of the public welfare, to play upon those strings of feeling and sentiment not unknown, or even unfamiliar, to capitalist and wage earner to produce the harmony of industrial peace.